

REMARKS

The Official Action dated May 23, 2005 has been carefully considered. Accordingly it is believed that the present amendment places the application in condition for allowance. Reconsideration is respectfully requested.

By the present amendment, claims 1, 10, 11, 14, 25, 29 and 30 are amended to replace the term "product" with the term "substance for distributing onto a target surface" in order to reflect the preambles of the independent claims. Claims 1 and 25 are also amended to recite that the flexible film dosing reservoir is disposed between the first external surface of the first side and the second internal surface of the second side in accordance with the teachings of the specification, for example at page 2, lines 15-18. Finally, claims 29 and 30 are amended to recite that the respective applicators of these claims include a first side having a first internal surface and a first external surface and a second side having a second internal surface and a second external surface, with the reservoir disposed adjacent to the first side, again in accordance with the teachings of the specification, for example at page 2, lines 15-18. It is believed that these changes do not involve any introduction of new matter, whereby entry is believed to be in order and is respectfully requested.

In the Official Action, claims 1-6, 10-20, 22, 23 and 25-28 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Examiner was of the opinion that the originally filed disclosure fails to describe or support what materials and configurations are necessary to constitute a resealable channel.

This rejection is traversed and reconsideration is respectfully requested. More particularly, the specification discloses at page 14 that the distribution channel 44 may be of a material, i.e. a flexible film, and configuration that is self-sealing and collapses shut to restrict, if not preclude, fluid flow except when the flexible film dosing reservoir is substantially pressurized. The specification discloses a specific embodiment wherein a

channel is formed by making two substantially parallel seals along facing layers of a reservoir where the space between these seals becomes a channel for fluid to move from the reservoir to distribution apertures. The specification indicates that the channel will naturally lay flat and thereby in a closed position due to the seals, but will become almost tubular when the reservoir is pressurized and filled with fluid traveling through the channel. Further, upon release of the pressure, the channel will naturally return to its flat state, causing the sealing effect to prevent further product delivery. Suitable materials and configurations of the channel are also disclosed. That is, the specification teaches that in one embodiment, the channel width is preferably in the range of from about 0.125 inches to about 0.5 inches wide, more preferably about 0.25 inches, to allow resealing of the channel while not requiring excessive force on the pouch to pressurize the channel. See, for example, the specification at page 14, line 13 - page 15, line 2. Flexible film materials are well-known in the art, several examples of which are disclosed in the specification, for example at page 17.

As a matter of Patent Office practice, a specification disclosure which contains a teaching of the manner and process of making and using the invention in terms which correspondence in scope to those used in describing and defining the subject matter sought to be patented must be taken as in compliance with the enabling requirement of the first paragraph of §112 unless there is reason to doubt the objective truth of the statements contained therein which must be relied on for enabling support, *In re Marzocchi*, 169 U.S.P.Q. 367, 369 (CCPA 1971). In any event, it is incumbent upon the Patent Office, whenever a rejection on this basis is made, to explain why it doubts the truth or accuracy of any statement in a supporting disclosure and to back up assertions of its own with acceptable evidence or reasoning which is inconsistent with the contested statement, *In re Marzocchi*, 169 U.S.P.Q. at 370. The Examiner has not provided any evidence or reasoning inconsistent with the teachings in the specification, particularly at pages 14 and 15, which would establish

that the specification does not enable one of ordinary skill in the art to provide a flexible film dosing reservoir as claimed. Thus, the teachings in the specification must be taken as in compliance with the enabling requirement of 35 U.S.C. §112, first paragraph, whereby the rejection has been overcome. Reconsideration is respectfully requested.

Claims 1-6, 10-20, 23, 25-28 and 30 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In claims 1, 25 and 30, the Examiner questioned the recitation of "predetermined location". In claims 1 and 25, the Examiner questioned the recitation of "first and second sides, first and second internal surfaces, and first and second external surfaces." In claims 2, 13 and 28, the Examiner questioned the recitation of "substantially fluid-impervious barrier layer". In claims 25 and 30, the Examiner questioned the recitation of "flow restriction layer", and in claims 29 and 30, the Examiner questioned the recitation of "first substrate". With respect to each of these terms, the Examiner asserted that the originally filed disclosure fails to describe or support what constitutes the indicated term.

This rejection is traversed and reconsideration is respectfully requested. Applicant submits that the present specification as originally filed fully discloses and describes the presently claimed terms in accordance with the requirements of 35 U.S.C. §112, first paragraph.

Initially, applicants note that the term "predetermined location" has been omitted from claims 1, 25 and 30. Thus, the Examiner's assertion that the specification fails to describe or support this term is moot. Claims 1 and 25 recite a first side having a first internal surface and a first external surface, a second side having a second internal surface and a second external surface, and a flexible film reservoir disposed between the first external surface of the first side and the second internal surface of the second side. The Examiner's attention is directed to the specification, for example, at page 2, lines 12-18, which discloses

that the applicator includes a first side having a first internal surface and a first external surface, a second side having a second internal surface and a second external surface, and a flexible film reservoir disposed between the first external surface of the first side and the second internal surface of the second side. Thus, the specification provides a description of the applicator as recited in claims 1 and 25. While, as noted by the Examiner, the specification beginning at page 4 describes an embodiment of the applicator having a front panel 24 with a front outer surface 31 and a front inner surface 32, and a back panel 26 with a back outer surface 33 and a back inner surface 34, one of ordinary skill in the art will recognize that this described embodiment is a specific embodiment of the applicator described at page 2 in which the first side is represented by front panel 24 and the second side is represented by back panel 26. However, in view of the generic description in the specification, at page 2, recitation of the generic first side and second side in claims 1 and 25 is warranted.

With respect to claims 2, 13 and 28, applicants submit that the present specification fully describes the fluid-impervious barrier layers recited in these claims. For example, claims 2 and 28 recite a substantially fluid-impervious barrier located between the reservoir and the second internal surface of the second side. The Examiner's attention is directed to the embodiment of the applicator disclosed in Example 8 and Fig. 53 wherein an applicator in the form of a body cleansing mitt 10 includes a first side 370 having an internal surface and an external surface, a flexible film reservoir in the form of a dosing pouch 374, a second side 378 having an internal surface and an external surface, and a barrier film 376 located between the reservoir 374 and the internal surface of the second side 378. Thus, the embodiment of Fig. 53 and Example 8 discloses a substantially fluid-impervious barrier layer located between the reservoir and the second internal surface as recited in claims 2 and 28.

Claim 13 recites a second substantially fluid-impervious barrier layer disposed between the first barrier layer and the second internal surface. In this regard, the Examiner's attention is directed to the embodiment of Fig. 61 and Example 12. In this embodiment, an applicator in the form of a heavy duty bathroom shower/tub mitt includes a first side 610 having internal and external surfaces, a flexible film dosing reservoir in the form of a dosing pouch 614, a second side 622 having internal and external surfaces, a first barrier film 616 located between the flexible film reservoir 614 and the internal surface of the second side 622, and a second barrier layer 624 in the form of a polyethylene embossed film which prevents a hand in the applicator from getting wet when rinsing the external surface of side 622. The barrier layer 624 is disposed between the barrier film 616 and the second side 622. Thus, the present specification fully describes an applicator having first and second substantially fluid-impervious barrier layers disposed as required by claim 13.

Claims 25 and 30 recite a flow restriction layer disposed between the reservoir and the first external surface. In this regard, the Examiner's attention is directed to the specification, for example, at page 15, line 8, wherein a flow restriction layer is described. Specifically, the flow restriction layer may be a separate layer in the applicator such as layer 37 (between the first side and the reservoir), or an additional layer between layer 37 and the reservoir 30 as shown in Fig. 2. A plurality of materials and configurations are described in detail at page 15 for use as such a flow restriction layer. Thus, the present specification fully describes a flow restriction layer and the disposition of such a layer between the flexible film dosing reservoir and the first side having a first external surface.

Finally, while claims 29 and 30 previously recited a first substrate, these claims have been amended to recite a first side and a second side with, respectively, first internal and external surfaces and second internal and external surfaces, and the term "first substrate" has

been omitted from the claims. Thus, the Examiner's assertion of lack of description of the "first substrate" is therefore moot.

In view of the noted teachings throughout the present disclosure, including the figures, applicants submit that the present claims are fully described in the present specification in accordance with the requirements of 35 U.S.C. §112, first paragraph, whereby this rejection has been overcome. Reconsideration is respectfully requested.

Claim 29 was rejected under 35 U.S.C. §103(a) as being unpatentable over the Ketner U.S. Patent No. 3,363,922 in view of the Lane, Jr. et al. U.S. Patent No. 4,890,744, while claim 30 was rejected under 35 U.S.C. §103(a) as being unpatentable over Ketner in view of Lane, Jr. et al. and further in view of the Gerber et al. U.S. Patent No. 2,209,914. The Examiner asserted that Ketner discloses an applicator including a first substrate and a flexible thin film dosing reservoir and relied on Lane, Jr. et al. as disclosing a thin film pouch having a pressure rupturable frangible seal and a dispensing cavity provided with a distribution channel or conduit. The Examiner then asserted it would have been obvious to employ the channeling reservoir of Lane, Jr. et al. for the reservoir of Ketner. The Examiner relied on Gerber et al. as disclosing a pad provided with a reservoir and a flow restriction layer or strip of material.

These rejections are traversed and reconsideration is respectfully requested. More particularly, as noted above, claims 29 and 30 each recite an applicator comprising a first side having a first internal surface and a first external surface, a second side having a second internal surface and a second external surface, and a reservoir containing a substance for distributing onto a target surface and disposed adjacent to the first side. According to claim 29, the substance is sequentially releasable through a frangible seal and a distribution channel to the first side by multiple applications of pressure to the reservoir. According to claim 30, the reservoir has at least one weak region having a comparatively low burst force and a

distribution channel, with the substance being sequentially releasable to the first side through the channel by multiple applications of pressure to the reservoir. Additionally, in the applicator of claim 30, a flow restriction layer is disposed between the reservoir and the first side. The applicators of claims 29 and 30 allow for controlled and multiple dosing of a substance in a simple yet effective manner.

On the other hand, Ketner, as discussed in applicants' previous responses, discloses a fluid applicator comprising a sheet, pad, ball or other shaped body made of porous material with a sealed non-porous pouch, capsule bag or other container enclosing a fluid. The container is frangible and will open under pressure to release the fluid. However, Ketner fails to disclose a reservoir comprising a channel through which a substance is sequentially releasable by multiple applications of pressure to the reservoir. On the other hand, Lane, Jr. et al. disclose a pouch formed from front and back thin films by a seal having a portion which is frangible in response to a pressure differential between a product storage chamber and a dispensing cavity. When the seal is ruptured, product can be dispensed from the product storage chamber to the dispensing cavity and subsequently out the dispensing cavity opening. The pouch is intended for dispensing food, for example ketchup or lemon juice (column 7, lines 45-52), and applicants find no teaching or suggestion by Lane, Jr. et al. for use of the pouch in combination with any type of applicator.

On the other hand, applicants find no teaching or suggestion by Ketner for employing a pouch as taught by Lane, Jr. et al. in the Ketner applicator, absent the teachings of applicants' specification. The Examiner has asserted that the substitution of the Lane, Jr. et al. pouch for the container of Ketner would have been obvious as such constitutes the substitution of function equivalents. However, the Examiner cannot pick and choose among individual elements of assorted prior art references to recreate a claimed invention; rather, the Examiner has some burden to show some teaching or suggestion in the references to support

their use in the particular claimed combination, *SmithKline Diagnostics, Inc. v. Helena Laboratories Corp.*, 8 USPQ2d 1468, 1475 (Fed. Cir. 1998). However, the Examiner has not shown any such teaching or suggestion and therefore has not met the requisite burden for establishing a prima facie case of obviousness.

Moreover, the mere fact that the prior art could be modified to result in a claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification, *In re Laskowski*, 10 USPQ2d 1397, 1398 (Fed. Cir. 1989). Applicants find no such suggestion regarding any desirability of the modification asserted by the Examiner. Particularly, applicants find no teaching, suggestion or recognition in the cited prior art that the inclusion of a reservoir comprising a frangible seal or a weak region having a comparatively low burst force, in combination with a distribution channel provides a sequentially releasable substance to an applicator surface through the channel by multiple applications of pressure to the reservoir, thereby providing controlled dosing of a substance to the applicator surface with a simple reservoir design.

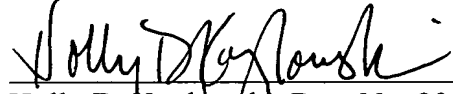
The deficiencies of Ketner and Lane, Jr. et al. are not resolved by Gerber et al. Gerber et al, like Ketner, disclose a pad having a capsule or container within a covering material. Applicants find no teaching or suggestion by Gerber et al relating to a reservoir as required by either claim 29 or 30. Thus, Gerber et al. fail to resolve the deficiencies of Ketner and Lane, Jr. et al.

It is therefore submitted that the applicators defined by claim 29 and 30 are non-obvious over and patentably distinguishable from the cited combinations of references, whereby the rejections under 35 U.S.C. §103 have been overcome. Reconsideration is respectfully requested.

Serial No. 10/089,331
Amendment filed August 23, 2005
Reply to Official Action dated May 23, 2005

It is believed that the above represents a complete response to the rejections under 35 U.S.C. §§103 and 112, first and second paragraph, and places the present application in condition for allowance. Reconsideration and an early allowance are requested.

Respectfully submitted,



Holly D. Kozlowski, Reg. No. 30,468
Dinsmore & Shore LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8568

1179275v1